IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/04/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.8435 OF 2003
AND
WPMP.NOs.10801 & 10802 OF 2003
and
WPMP.No.15851 of 2003

Thiruppur Market Viyaparigal Sangam,
Rep. by its Secretary,
P.T. Murugesan .. Petitioner

-Vs-

1. Tamil Nadu Urban Finance and
Infrastrucuture Development
Corporation,
No.84, T.T.K. Road, Chennai 18.
rep. by Chairman & Managing Director

2. The Commissioner,
Tiruppur Municipality,
Tiruppur.

3. The Chairman,
Municipal Council,
Tiruppur Municipality,
Tiruppur. .. Respondents

Petition filed under Article 226 of the Constitution of India for
issuance of a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mrs.Nalini Chidambaram for
Mr.S. Silambanan

For Respondent-1 : Mr.S.S. Sundar for
Mr.T.R. Rajaraman
Respondents 2-3 : Mr.G. Sankaran

:J U D G M E N T

This writ petition has been filed on behalf of Tiruppur Market Viyaparigal Sangam, represented through its Secretary, seeking for writ of certiorarified mandamus quashing the resolution of the third respondent from demolishing and reconstructing the existing Kamaraj Road market and Easwaran Koil Street Market in Tiruppur.

2. The petitioner has been registered as a Society in 2003. It represents various vendors who are carrying on business in daily market in Kamaraj Road market and Easwaran Koil Street Market in Tiruppur. It is stated that two markets are in existence for the last 30 and 60 years respectively, but the respondents have taken a decision to demolish the two markets and reconstruct the same without assuring the existing traders that sufficient number of shops will be constructed to accommodate the existing traders. Similarly the rent has also not been finalised. It has been stated that the members of the petitioner's association are occupying small spaces and doing business in the trade of vegetables, plantain, plantain leaves, flowers, etc. It has been further stated that rent had been fixed at Rs.300/- before three years. The right to collect rent has been auctioned for the every financial year and for the year 2002-2003, such right has been auctioned for Rs.20 lakhs. Various traders pay the rent to the licencee. While the matter stood thus, on 29.11.2002, the Municipal Council passed Resolution No.1921, which is extracted hereunder :-

By Letter having reference No.TUFIDCO/P.F.A/IDSMT/F.1/ANLP/2 002 it was informed that loan of Rs.628 lakhs will be contributed by the Central Government at Rs.290.50 lakhs and TUFIDCO at 337.50 lakhs under the IDSMT scheme. Referring to the said letter the 1st Respondent Tiruppur Municipal Council, by Resolution No.625, dated 15-03-20 02 approved the implementation of the revenue yielding and service oriented schemes under IDSMT with the financial aid of TUBIDCO for Rs.7 00 lakhs. Under the revenue yielding scheme the shops in Tiruppur Daily market in Kamaraj Road, Tiruppur and another market in Easwaran Koil Street, Tiruppur will be reconstructed at a cost of Rs.140 lakhs and 134 lakhs respectively. . .

Since the members of the petitioner's Association apprehended that the shops would be demolished even without making any alternative arrangement in the interregnum, various representations have been filed from time to time. As a matter of fact, the petitioner had earlier filed W.P.No.6022 of 2003, wherein without considering the writ petition on merit, a direction was given for consideration of the representation, but such representation has not been considered by the Council and has been rejected by the Chairman. It is further stated that in fact some of the members of the petitioner's association had earlier filed W.P.No.1895 of 2003 wherein the High Court had also directed the respondents 2 & 3 to consider the representation filed on behalf of the association and dispose of the same. It is stated that representation has not been considered properly and the respondents have taken an arbitrary decision to demolish the market. It has been submitted that the two markets in question are in good condition and there is no necessity nor justification to demolish the market by incurring huge expenditure. It has been further indicated that even assuming that the proposal has to be

implemented the 2nd and 3rd Respondents are under no obligation to give an undertaking that once the new market is constructed the existing lessees will be given preferential allotment in the new market. Also the 2nd and 3rd Respondents should construct the new market in such a way that all the existing lessees will be accommodated in the new market. Also during construction period, the respondents 2 and 3 should provide a alternate place for the existing lessees to carry on their trade. . . .. It has been submitted that the proposal to demolish and reconstruct the existing market is totally arbitrary and in violation of Articles 14 and 19(1)(g) of the Constitution of India.

3. A counter affidavit has been filed on behalf of the respondents 2 & 3 refuting the contentions raised by the petitioner's Association. It has been stated that neither the petitioner Association nor the members of such Association are directly lessees under the respondents 2 & 3. It has been further submitted that even assuming that they were lessees at some point of time, they do not have any right to continue for ever and the respondents 2 & 3 have taken a decision to reconstruct the market after demolition in order to avoid health hazard and other problems by availing financial assistance from the respondent No.1. It has been further stated that as per the revised plan, number of shops to be constructed would be in excess of number of shops to be demolished. It has been further indicated that the shops are to be settled on the basis of auction and only minimum rent has been fixed.

4. Learned senior counsel for the petitioner has contended that since the petitioners are lessees, even assuming that there is demolition, on reconstruction the existing lessees have right of re-entry.

For the aforesaid purpose, the learned senior counsel has placed reliance upon the decision of the Supreme Court reported in 1998(8) S.C.C. 658 (KONDETI SURYANARAYANA AND OTHERS v. PINNINTHI SESHAGIRI RAO).

5. In the present writ petition, on the basis of materials on record, it is difficult to come to a conclusion that the petitioners were lessees under the respondents 2 & 3. Even assuming that they were lessees for a limited period, there is no dispute that such lessees under the Municipalities are not covered under the law relating to rent control matters. The decision of the Supreme Court relied upon by the learned senior counsel for the petitioner under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. is not at all applicable to the facts and circumstances of the present case. On the other hand, the decision reported in A.I.R. 1996 SC 1406 (CHINT RAM RAM CHAND AND OTHERS vs. STATE OF PUNJAB AND OTHERS),related to the question of shifting of market area and the rights of the existing licenced dealers in the old market, is more applicable. In the said decision, the contention of the existing licencees to be accommodated in the new market was negatived.

6. Similar contentions raised relating to shifting of market and the right of the existing lessees/tenants was considered by this Court in

2001(1) L.W. 535 (THE VIRUDHACHALAM TOWN VEGETABLE DAILY MARKET MERCHANTS WELFARE ASSOCIATION AND VRIDHACHALAM TALUK CONSUMER RIGHTS) and negatived.

7. As a matter of fact in various decisions it has been held that such shop owners occupying the premises under the Town Panchayat or Municipalities do not have any leasehold right in perpetuity and cannot claim as a matter of right, they shall continue on payment of 15% extra (See A.I.R. 1998 MADRAS 217 (A. SATHAR v. THE DISTRICT COLLECTOR, COIMBATORE AND ANOTHER) and 2000(3) M.L.J.(M. PALANISAMY AND OTHERS v. THE SRIRAMAPURAM TOWN PANCHAYAT THROUGH ITS EXECUTIVE OFFICER, SRIRAMAPURAM, DINDIGUL).

8. Even assuming that the members of the petitioner□s Association were existing lessees under the respondents 2 & 3, the question as to whether such shop could be reauctioned or settled on the existing lessees on payment of 15% extra is in fact a discretionary matter. In the present case, the Municipal Council has already passed a resolution to demolish and reconstruct the market and to settle the same by way of auction. It cannot be said that any vested right of the petitioner or the members of the petitioner Association is being violated by such action of the respondents.

9. Learned senior counsel appearing for the petitioner has vehemently contended that there is no necessity to reconstruct the market as the existing shops are in good condition and huge expenditure of public money should be avoided. It is to be seen that the present writ petition does not purport to be a public interest litigation. Moreover, the question as to whether the markets should be re-modelled or reconstructed after demolition is essentially a discretionary matter of the Council. It cannot be said that the resolution of the Council is arbitrary. Moreover, the High Court cannot expect to sit in appeal over the resolution passed by the Council.

10. Learned senior counsel for the petitioner has also contended that even after reconstruction, the shops should be allotted to the present members of the petitioner association. As a matter of fact, after the case was heard and reserved for orders, a formal application for amendment has been filed. The prayer for amendment is allowed. Such a contention even though prima facie attractive, does not appear to be sustainable in view of the decision of the Supreme Court in A. I.R. 1996 SC 1406 (cited supra). However, it is a matter for the respondents 2 and 3 to decide and a writ of mandamus cannot be issued.

11. For the aforesaid reasons, I do not find any merit in the writ petition, which is accordingly dismissed. All the interim orders stand vacated. Consequently, connected miscellaneous petitions are closed.

Index : Yes
Internet : Yes

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To

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No.84, T.T.K. Road, Chennai 18. rep. by Chairman & Managing Director

2. The Commissioner, Tiruppur Municipality, Tiruppur.

3. The Chairman, Municipal Council, Tiruppur Municipality, Tiruppur.